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IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

ANTHONY ESPOSITO, Plaintiff, **v.** **D. KHATRI, M.D.; C. COOK, AGPA; DR. AYMAR; T.H. CALVIN, JR., M.D.,** Defendants.	08CV0742 H WMc **DEFENDANTS KHATRI AND COOK'S NOTICE OF HEARING AND MOTION TO DISMISS PLAINTIFF'S COMPLAINT** **[Fed. Rules of Civ. Proc, Rule 12(b)(6)]** Hearing: October 3, 2008 Time: 9:00 a.m. Courtroom: C Judge: Hon. William McCurine, Jr.

TO PLAINTIFF ANTHONY ESPOSITO, IN PRO PER:

PLEASE TAKE NOTICE that on October 3, 2008, at 9:00 a.m., or as soon thereafter as counsel may be heard by the above-entitled Court, located at 940 Front Street, San Diego, Defendants D. KHATRI, M.D., and C. COOK, will and hereby do move this Court for an order dismissing Plaintiff's complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. The complaint failed to state a claim upon which relief may be granted against either Defendant Khatri or Defendant Cook. Specifically, Plaintiff fails to allege facts indicating that either Defendant acted with deliberate indifference toward Plaintiff's medical needs.

The motion to dismiss is also presented as a non-enumerated motion to dismiss pursuant to Rule 12(b) of the Federal Rules of Civil Procedure and 42 U.S.C. section 1997e. Specifically, while Plaintiff exhausted his administrative remedies with respect to his claim that Defendants failed to provide him with physical therapy services, Plaintiff failed to exhaust his administrative remedies with respect to his remaining Eighth Amendment claims.

This motion is based upon this Notice of Hearing and Motion, the accompanying Memorandum of Points and Authorities, the pleadings and papers on file in this action, and upon such other matters as may be presented to the Court at the time of the hearing.

Dated: August 26, 2008

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of the State of California

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/s/Michael P. Cayaban
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